

1 DAVID R. ZARO (BAR NO. 124334)
TED FATES (BAR NO. 227809)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 865 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
tfates@allenmatkins.com

6 Attorneys for Court-appointed Receiver
7 KRISTA L. FREITAG

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 FEDERAL TRADE COMMISSION,

13 Plaintiff,

14 v.

15 AMERICAN HOME SERVICING
16 CENTER, LLC,

17 CAPITAL HOME ADVOCACY
18 CENTER, LLC,

19 NATIONAL ADVOCACY CENTER,
LLC,

20 JAIME ABERTO, a/k/a James Aburto
and Jamie Aburto, individually, as an
21 officer of American Home Servicing
Center, LLC and National Advocacy
22 Center, LLC, and d/b/a A.H.S.C.,
American Home Servicing Center, Local
23 Page, NAC, National Servicing Center,
NSC Processing, and Secured
24 Processing,

25 MARCUS FIERRO, JR., individually, as
a member of American Home Servicing
26 Center, LLC and National Advocacy
Center, LLC, and d/b/a A.H.S.C. and
27 American Home Servicing Center,

Case No. SACV 18-00597-JLS-KESx

**NOTICE OF MOTION AND MOTION
TO CONCLUDE RECEIVERSHIP
AND FOR ORDER: (1) APPROVING
FINAL ACCOUNTING AND
REPORT; (2) APPROVING
DISPOSITION/TRANSFER OF
BOOKS AND RECORDS; AND
(3) DISCHARGING RECEIVER;
RECEIVER'S FINAL ACCOUNTING
AND REPORT**

Date: December 14, 2018

Time: 2:30 p.m.

Ctrm.: 10A

Judge: Hon. Josephine L. Staton

1 EVE CHRISTINE RODRIGUEZ, a/k/a
2 Elizabeth Davis, Elizabeth Powers,
3 Christina Rodriguez, Christine
4 Rodriguez, and Elizabeth Rodriguez,
5 individually, as a manager of American
6 Home Servicing Center, LLC, a member
7 of Capital Home Advocacy Center, and
8 d/b/a National Advocacy Group,

9 And SERGIO LORENZO
10 RODRIGUEZ, a/k/a Sergio Lawrence,
11 individually, as a manager of American
12 Home Servicing Center, LLC, a member
13 of Capital Home Advocacy Center, and
14 d/b/a National Advocacy Group,

15 Defendants.

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

1 **TO THE HONORABLE JOSEPHINE L. STATON, JUDGE OF THE**
2 **UNITED STATES DISTRICT COURT, AND ALL INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that on December, 2018, at 2:30 p.m. in
4 Courtroom 10 of the above-entitled Court, located at 411 West 4th Street, Room
5 1053 Santa Ana, CA 92701-4516, Krista L. Freitag ("Receiver"), the Court-
6 appointed permanent receiver for American Home Servicing Center, LLC
7 ("American Home"), Capital Home Advocacy Center ("Capital Home"), National
8 Advocacy Center, LLC ("National Advocacy"), and their subsidiaries and affiliates
9 (collectively the "Receivership Entities" or individually, a "Receivership Entity"),
10 will and hereby does move the Court to conclude the receivership and for an order,
11 (1) approving the final accounting and report; (2) approving disposition/transfer of
12 books and records; and (3) discharging the Receiver ("Motion"). The Motion and
13 relevant pleadings are available at the Receiver's website,
14 <http://www.ethreadvisors.com/ftc-case-docs/ftc-capital-home/>.

15 **Procedural Requirements:** If you oppose this Motion, you are required to
16 file your written opposition with the Office of the Clerk, United States District Court,
17 411 West 4th Street, Room 1053 Santa Ana, CA 92701-4516, and serve the same on
18 the undersigned not later than 21 calendar days prior to the hearing.

19 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
20 above date, the Court may grant the requested relief without further notice. This
21 Motion is made following the conference of counsel pursuant to L.R. 7-3.

22 Dated: October 5, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Court-appointed
Receiver KRISTA L. FREITAG

TABLE OF CONTENTS

	<u>Page</u>
I. RECEIVER'S FINAL ACCOUNTING AND REPORT	2
A. Background and Business Assessment	2
B. Asset Disposition and Recovery	5
C. Receiver Reporting and Communications	6
D. Receivership Accounting	8
II. CLOSING MATTERS	8
A. Payment of Outstanding Costs	8
B. Disposition/Transfer of Records	9
C. Discharge of Receiver	9
III. ARGUMENT	10
A. Broad Equitable Powers of the Court	10
B. Conclusion of Receivership and Discharge of Receiver	11
IV. CONCLUSION	12

TABLE OF AUTHORITIES

Page(s)

Cases

Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.,
205 F.3d 1107 (9th Cir. 1999)..... 10

First Empire Bank-New York v. FDIC,
572 F.2d 1361 (9th Cir. 1978)..... 11

SEC v. Capital Consultants, LLC,
397 F.3d 733 (9th Cir. 2005)..... 10

SEC v. Elliot,
953 F.2d 1560 (11th Cir. 1992)..... 10

SEC v. Hardy,
803 F.2d 1034 (9th Cir. 1986)..... 10, 11

SEC v. Wencke,
622 F.2d 1363 (9th Cir. 1980)..... 10

Statutes

12 U.S.C. § 3758..... 7

MEMORANDUM OF POINTS AND AUTHORITIES

Krista Freitag, the Court-appointed Receiver herein, respectfully submits this Memorandum of Points and Authorities in Support of her motion to conclude the receivership and: (1) approving the final accounting and report; (2) approving disposition/transfer of books and records; and (3) discharging the Receiver ("Motion").

The Receiver has completed managing, monetizing recoverable assets of the receivership estate, has determined no significant recovery of additional assets is likely and has a plan to transfer access to records in possession of the Receiver, as appropriate. As such, the Receiver is prepared to close the receivership estate.

Unfortunately, the assets of the Receivership Entities had very little value such that there are insufficient funds to pay approved administrative expenses of the receivership and no funds available to make distributions to consumers, former employees, or other creditors. The Receiver has recovered a total of \$22,819. For the time period of April 13, 2018 to May 31, 2018, the Receiver's fees and costs, including forensic imaging costs, amount to \$66,726.36. Fees and costs for the Receiver's counsel during the same time period amount to \$34,241.55. A small portion of these fees and costs were paid *pro rata* from funds recovered by the Receiver pursuant to the Court's order approving the First Interim Fee Applications. Dkt. No. 123. A total of \$22,130 was paid pursuant to the order, leaving \$689 cash on hand in the receivership estate at this point. The Receiver and her counsel have not sought approval of further fees incurred since May 31, 2018 due to the lack of available funds to pay the amounts in their First Interim Fee Applications.

The relief sought herein will allow the Receiver to take the remaining steps necessary to conclude the receivership, which, because the underlying litigation is still ongoing, includes transferring access for National Advocacy and Capital Home records to the FTC and Capital Home records to Defendants Sergio Rodriguez and Eve Christine Rodriguez (if not already completed).

I. RECEIVER'S FINAL ACCOUNTING AND REPORT

A. Background and Business Assessment

On April 13, 2018, this Court entered the Ex Parte Temporary Restraining Order with Asset Freeze, Appointment of Temporary Receiver, Limited Expedited Discovery, and Order to Show Cause Why Preliminary Injunction Should Not Issue (the "TRO"), appointing Krista L. Freitag ("Receiver") as temporary receiver for American Home Servicing Center, LLC ("American Home"), Capital Home Advocacy Center ("Capital Home"), National Advocacy Center, LLC ("National Advocacy"), and their subsidiaries and affiliates (collectively the "Receivership Entities" or individually, a "Receivership Entity") with full powers of an equity receiver.

On April 27, 2018, this Court entered the Preliminary Injunction with Asset Freeze, Appointment of Receiver, Limited Expedited Discovery, and Other Equitable Relief, as to American Home, Capital Home, National Advocacy, and Marcus Fierro, (the "First PI Order"). The First PI Order makes the Receiver's appointment for the Receivership Entities permanent. On June 12, 2018, this Court entered the Preliminary Injunction with Asset Freeze, Limited Expedited Discovery, and Other Equitable Relief, as to Defendants Eve Christine Rodriguez and Sergio Lorenzo Rodriguez (the "Second PI Order").

Pursuant to the TRO, PI Orders and law governing federal equity receivers, the Receiver was charged with, among other things, assuming control over the Receivership Entities and their assets ("Receivership Assets").

Promptly upon her appointment, the Receiver served banking institutions and successfully obtained possession of and secured the following two physical locations associated with the operations of Capital Home and National Advocacy:¹

¹ No known operational locations of American Home were located.

1. 1809 East Dyer Road, Suite 301, Santa Ana, CA 92705, and
2. 15991 Red Hill Avenue, Suite 204, Tustin, CA 92780 (including the 333 City Blvd. West, 17th Floor, Orange, CA 92868 virtual office location where it appears mail was directed and received).

The bank accounts listed in the TRO and additional accounts identified through an investigation of documents and information found at the locations where the Receivership Entities conducted business were frozen. Based on the Receiver's investigation of documents and computer records, the Receiver was able to identify and take control of approximately \$5,230 in National Advocacy cash and \$3,713 in Capital Home cash.

With regard to each of the foregoing locations, the Receiver took physical control, changed the locks, served/notified landlords, served/notified vendors and otherwise worked to ensure no entry into the premises. The Receiver's staff also redirected and monitored mail for eight (8) known current or prior operations addresses.

Upon entry to the Capital Home office premises, the Receiver, her staff and her counsel met with and interviewed the 13 employees, consultants, and others who were present, including defendant Eve Christine Rodriguez. The Receiver took control over computers and electronic devices located at the office premises, as well as any off-site electronic records. Pursuant to the TRO, the Receiver granted access to certain computer drives to the FTC and also retained the services of SETEC Investigations to image the computers located at the office premises which images were not otherwise taken by the FTC. This work involved imaging the hard drives from each of the computers in order to preserve all e-mails, documents, and accounting information maintained on the devices.

Regarding National Advocacy, after locating and securing the office premises on the afternoon of Friday, April 20, 2018, the Receiver met SETEC to retrieve all hard drives and the server from the premises for safeguarding and for imaging if

1 sufficient resources became available to do so. It is important to note that the
2 employees of National Advocacy appear to have intentionally left the premises and
3 abandoned the business shortly before the Receiver arrived at the office on April 20,
4 2018, so no employee interviews occurred.

5 Numerous documents and records (including electronic forms thereof) were
6 secured in the office premises and/or were otherwise secured. Said physical records
7 from both office premises were securely transferred to the possession of the Federal
8 Trade Commission and access thereto granted to defendants Eve Christine Rodriguez
9 and Sergio Rodriguez. Access to electronic customer relations management records
10 of Capital Home were also provide to the FTC and defendants Eve Christine
11 Rodriguez and Sergio Rodriguez.

12 Based on records obtained through the Capital Home customer relations
13 management ("CRM") software, it appeared that the Capital Home Senior
14 Processors' (employed as of April 16, 2018) files included approximately 125 active
15 consumer accounts. The Receiver sent communications to the known Capital Home
16 consumers and lenders, directing them to communicate directly with one another
17 and/or referring consumers to free mortgage counseling resources available through
18 HUD. And although its CRM software company and other vendors (discovered
19 Friday, April 20, 2018) were served with the TRO, the Receiver has been unable to
20 recover any consumer account information for National Advocacy because such
21 information is maintained at a third-party vendor under Jaime Aburto's name.

22 From records obtained at Capital Home, it was clear that Defendants Capital
23 Home, Christine Rodriguez and Sergio Rodriguez required consumers to make
24 payments to them before consumers' loan modification applications were submitted
25 to their lenders and well before loan modifications were granted (if at all) by the
26 lenders. Accordingly, and with no financial resources or legal source of operating
27 income available to fund any level of operations (including payment of rent, utilities,
28 past-due payroll/current payroll, etc.), the Receiver determined the business could

1 not be operated at all, let alone operated lawfully and profitably. Therefore, the
2 Receiver did not retain any of the Capital Home employees and ceased operations.

3 Furthermore, to minimize accruing expenses in light of minimal receivership
4 estate resources, the Receiver and her staff worked quickly and diligently to box up
5 and secure records, to monetize the minimal value in personal property, and to turn
6 over the spaces to landlords.

7 **B. Asset Disposition and Recovery**

8 Other than the funds recovered as described herein and a few remaining items
9 of personal property, no additional Receivership Entity funds or assets appear
10 available for recovery. No real property has been identified and aside from the
11 account balances referenced above, all other accounts identified in the TRO or
12 otherwise discovered by the Receiver were either closed or had a zero balance.
13 Regarding personal property, a few items remain to be sold in the next 15 days. The
14 possible range of recovery from these items is expected to be \$100 to \$600.

15 It is important to note that in addition to the FTC's transmittal of notice of the
16 asset freeze to the banks, the Receiver promptly notified each bank identified in the
17 TRO as having an account associated with the Receivership Entities. In such notices,
18 the Receiver demanded turnover of the account, immediate cancellation of any debit
19 or credit cards, identification/freeze of any safe deposit box, account balance
20 information, and account records. The total cash balances in accounts at takeover are
21 reflected in the following table.

22
23
24
25
26
27
28

BANK BALANCES AT TAKEOVER:	
Capital Home	\$ 3,712
National Advocacy	\$ 5,230
TOTAL²	\$ 8,942

Regarding personal property, electronic inventories were taken, and the personal property consisted of CPUs, computer monitors, cubicles, and other miscellaneous office furniture (e.g., Ikea), fixtures and equipment, all of little resale value. With no money to pay rent, storage, or even to move out of nearly 9,000 square feet of office space (it was estimated that a move would cost between \$10,000 and \$15,000), the Receiver, through her staff, reached out to several professional, local auction companies and provided electronic inventories to them to determine an approximate value for the personal property. The auctioneers expressed that the market for general office equipment was very low and one commented that he would likely monetize the cubicles and file cabinets for scrap metal value. Ultimately, it was determined that the best approach would be to have the auction company purchase the vast majority of the personal property because they would necessarily take on the costs of moving the personal property. The best offer received was from one auction company that was willing to vacate the offices in exchange for paying the estate \$1,500. It is also important to note that removing the personal property swiftly from the office allowed the Receiver to negotiate with the landlord for a recovery of the \$6,295 deposit on the Capital Home office lease, despite the fact the lease was terminated before the end of the lease term.

C. Receiver Reporting and Communications

At the beginning of the receivership, the Receiver established a dedicated web page, which has provided case information and updates for access by consumers,

² The entire balances in the Capital Home and National Advocacy Accounts were transferred to the Receivership Estate's Operating Account.

1 employees and lenders. The internet address for the webpage is
2 <http://www.ethreeadvisors.com/ftc-case-docs/ftc-capital-home/>. The Receiver also
3 maintained a dedicated email address and telephone line for consumer inquiries. As
4 previously mentioned, the Receiver was forced to cease operations and thus
5 communicated with known consumers and lenders, directing them to communicate
6 directly with one another and/or referring consumers to free mortgage counseling
7 resources available through HUD. This ongoing directive has occurred as applicable
8 email, telephone or mail correspondence has been received. It is important to note
9 that if any payments were received, all payments were returned to the payors.

10 As noted above, the Receiver has notified the applicable lenders that Capital
11 Home is no longer operating and that they must communicate directly with their
12 borrowers as to all issues relating to loans on which Capital Home was working. Out
13 of an abundance of caution, the Receiver recently sent an additional correspondence
14 to the lenders repeating this same directive, and letting them know any/all Capital
15 Home and National Advocacy mail will not be deliverable and will be returned to
16 sender. The Receiver has also told consumers/borrowers that they must
17 communicate with their lenders directly and has posted the same directive
18 prominently on the receivership website. The Receiver is hopeful that these
19 communications and notices will result in lenders and consumers/borrowers
20 communicating with each other directly and lenders sending notices directly to
21 consumers/borrowers. However, at the very least, lenders must provide notices to
22 consumers/borrowers directly before they can commence a foreclosure. *See* 12
23 U.S.C. § 3758 (requiring that notice of a foreclosure be sent by certified or registered
24 mail to the owner of record of the property and all borrowers or "mortgagors" on
25 mortgage debt).

26
27
28

D. Receivership Accounting

The following summary reflects the bank account balances in the receivership estate bank accounts as of September 30, 2018:

RECEIVERSHIP ESTATE BANK BALANCES:	
Receivership Estate Operating Account	\$ 690

The following is a summary of the cash activity in the receivership estate bank accounts for the period from April 16, 2018 through October 4, 2018:

RECEIVERSHIP ESTATE CASH ACTIVITY:	
Pre-Receiver Operating Account Funds	\$ 8,942
Recovery – Petty Cash/Vending Cash	\$ 569
Recovery – Lease Security Deposit	\$ 6,295
Recovery – Utility Security Deposit	\$ 3,248
Recovery – Sergio Rodriguez Partial Return of Funds	\$ 1,576
Recovery – Personal Property Proceeds ³	\$ 2,190
Forensic Computer Imaging Expense Paid	(\$ 13,257)
Receiver Fees & Expenses Paid	(\$ 5,822)
Receiver Counsel Fees & Expenses Paid	(\$ 3,051)
Cash Balance as of October 4, 2018	\$ 690

II. CLOSING MATTERS

A. Payment of Outstanding Costs

As noted above, the receivership estate currently holds \$690. The Receiver also expects to recover an additional \$100 to \$600 for the few remaining items of personal property. Since May 31, 2018, the Receiver has incurred additional costs

³ This does not include the few remaining items of personal property expected to produce an additional \$100 to \$600 recovery.

1 totaling \$1,603.61 for returning checks to consumers, renewing the email accounts
2 for Capital Home (because of the ongoing litigation) and updating the website that
3 provides information to consumers and other interested parties. Accordingly, the
4 Receiver respectfully requests authority to partially reimburse herself for these costs
5 with the \$690 remaining in the estate plus whatever small amount is recovered from
6 the few remaining items of personal property.

7 **B. Disposition/Transfer of Records**

8 As previously mentioned, all physical files obtained at the Capital Home and
9 National Advocacy premises were turned over to the FTC and made available to
10 defendants Eve Christine Rodriguez and Sergio Rodriguez. The aforementioned
11 parties have also been provided access to the Capital Home CRM records.
12 Possession of the hard drives obtained at the National Advocacy premises has been
13 securely transferred to the FTC.

14 The FTC has access to email records for Capital Home and National Advocacy
15 through the aforementioned hard drive data they possess. Control over the Capital
16 Home email account, which was renewed by the Receiver for one year in September
17 2018, will then be given to Defendant Sergio Rodriguez as the owner of Capital
18 Home. With regard to National Advocacy emails, the Receiver did not gain
19 administrative access over the account, which was in the name of Jamie Aburto.

20 **C. Discharge of Receiver**

21 The Receiver has taken all appropriate steps to preserve and recover value
22 from the limited assets of the Receivership Entities. The Receivership Entities' assets
23 were marshalled, protected, and monetized to the extent possible. Unfortunately, the
24 value of such assets was so limited that the fees and costs of the Receiver and her
25 professionals will go largely unpaid and no funds are available to distribute to
26 consumers, former employees, or other creditors. As such, it is appropriate for the
27 Receiver to ask the Court to enter an order discharging her.

28

1 **III. ARGUMENT**

2 **A. Broad Equitable Powers of the Court**

3 "The power of a district court to impose a receivership or grant other forms of
4 ancillary relief does not in the first instance depend on a statutory grant of power
5 from the securities laws. Rather, the authority derives from the inherent power of a
6 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
7 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
8 and efficient administration of the estate by the district court for the benefit of
9 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). As the appointment
10 of a receiver is authorized by the broad equitable powers of the Court, any
11 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
12 953 F.2d 1560, 1569 (11th Cir. 1992).

13 District courts have the broad power of a court of equity to determine the
14 appropriate action in the administration and supervision of an equity receivership.
15 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). As the
16 Ninth Circuit explained:

17 A district court's power to supervise an equity receivership
18 and to determine the appropriate action to be taken in the
19 administration of the receivership is extremely broad. The
20 district court has broad powers and wide discretion to
21 determine the appropriate relief in an equity receivership.
22 The basis for this broad deference to the district court's
supervisory role in equity receiverships arises out of the
fact that most receiverships involve multiple parties and
complex transactions. A district court's decision
concerning the supervision of an equitable receivership is
reviewed for abuse of discretion.

23 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth*
24 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'
25 to the court's supervisory role, and 'we generally uphold reasonable procedures
26 instituted by the district court that serve the[e] purpose' of orderly and efficient
27 administration of the receivership for the benefit of creditors."). Accordingly, the
28

1 Court has broad equitable powers and discretion in the administration of the
2 receivership estate and disposition of receivership assets.

3 **B. Conclusion of Receivership and Discharge of Receiver**

4 Federal District Courts presiding over federal equity receiverships have broad
5 power and wide discretion in the supervision of the same. *SEC v. Hardy*, 803 F.2d
6 1034, 1037-38 (9th Cir. 1986). Their power and discretion includes the authority to
7 "make rules which are practicable as well as equitable." *Id.* at 1039 (quoting *First*
8 *Empire Bank-New York v. FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)). In this case,
9 the Court's supervision of the receivership is guided by these same rules.

10 The Receiver has diligently carried out her Court-ordered duties, including
11 assuming control of enterprises and their records (such records have or will be
12 transferred as presented herein), marshalling and selling assets to the extent possible,
13 and providing reports to the Court. As there is no further benefit to be gained from
14 maintaining this receivership, with no ability to legally or profitably operate and with
15 no resources to otherwise operate, the Receiver requests that she be discharged and
16 the case be closed.

17 The Receiver, therefore, requests an order discharging and fully releasing her
18 and her counsel of: (i) all duties under the TRO and PI Orders, and (ii) any and all
19 claims and liabilities associated with the case and the Defendants. In addition, the
20 Receiver asks the Court to approve and ratify all actions taken by the Receiver and
21 her professionals in the performance of the Receiver's Court-ordered duties. The
22 Receiver further requests the Court retain exclusive jurisdiction over any and all new
23 actions or claims related to the receivership or work done by the Receiver and her
24 professionals to carry out the Receiver's Court-ordered duties.

25
26
27
28

IV. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests the Court grant the Motion and issue the proposed order discharging the Receiver submitted herewith.

Dated: October 5, 2018

By: 
KRISTA L. FREITAG
Receiver

Dated: October 5, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates
EDWARD G. FATES
Attorneys for Receiver
KRISTA L. FREITAG